

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN RODRIGUEZ,

Movant,

-v-

UNITED STATES OF AMERICA,

Respondent.

21 Civ. 471 (PAE)

12 Cr. 790-3 (PAE)

ORDER TO ANSWER

28 U.S.C. § 2255

PAUL A. ENGELMAYER, District Judge:

The Court, having concluded that the motion brought under 28 U.S.C. § 2255 should not be summarily denied as being without merit, hereby ORDERS that:

The Clerk of Court shall electronically notify the Criminal Division of the U.S. Attorney's Office for the Southern District of New York that this order has been issued.

Within 60 days of the date of this order, the U.S. Attorney's Office shall file an answer or other pleading in response to the motion. Movant shall have thirty days from the date on which Movant is served with Respondent's answer to file a response. Absent further order, the motion will be considered fully submitted as of that date.

All further papers filed or submitted for filing must include the criminal docket number and will be docketed in the criminal case.

Movant requests the appointment of counsel. There is no constitutional right to counsel in a proceeding brought under § 2255. The Criminal Justice Act ("CJA") provides that a court may appoint counsel to an indigent person in a § 2255 proceeding when "the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). In deciding whether to exercise its discretion to appoint counsel under the CJA, courts in this circuit consider the same factors as those applicable to

requests for *pro bono* counsel made by civil litigants. *See e.g., Zimmerman v. Burge*, 492 F. Supp. 2d 170, 176 n.1 (E.D.N.Y. 2007) (citing *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989)). Those factors include the likelihood of success on the merits, the complexity of the legal issues, and the movant's ability to investigate and present the case. *See Cooper*, 877 F.2d at 172; *Hodge v. Police Officers*, 802 F.2d 58, 61–62 (2d Cir. 1986). The Court has considered those factors and finds that the appointment of counsel is not warranted at this time. Accordingly, Movant's request for the appointment of counsel is denied without prejudice. Movant may file a motion for the appointment of counsel at a later date.

The Clerk of Court is respectfully directed to mail a copy of this order to defendant.

SO ORDERED.

Dated: January 28, 2021
New York, New York



PAUL A. ENGELMAYER
United States District Judge